

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: Senate Bill 561 (First Edition)

SHORT TITLE: Sedimentation Civil Penalty Cap & Remissions.

SPONSOR(S): Senators Brock, Rouzer, and Daniel

FISCAL IMPACT					
	Yes ()	No ()	No Estimate Available (X)		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES					
Civil Penalty Forfeiture Fund					
DENR					
	See Assumptions and Methodology				
EXPENDITURES					
DENR					
	See Assumptions and Methodology				
POSITIONS (cumulative):	0	0	0	0	0
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:					
Department of Environment & Natural Resources (DENR); Civil Penalty Forfeiture Fund					
EFFECTIVE DATE: When SB 561 becomes law; effective on civil penalties paid on or after that date.					

BILL SUMMARY:

Senate Bill 561, Sedimentation Civil Penalty Cap & Remissions, makes several changes to the Sedimentation Pollution Control Act of 1973. First, SB 561 enacts G.S. 113A-65.2, allowing a person to request remission of a civil penalty imposed under G.S. 113A-64 by filing a request with the NC Sedimentation Control Commission (Commission) within 60 days after receiving notice of the assessment. The remission request must include a waiver of the right to a contested case hearing under the Administrative Procedure Act and a stipulation of the facts on which the assessment was based. The Commission makes the final decision on these requests for remission.

In determining whether a civil penalty remission request will be approved, the Commission must consider the following factors:

- 1) Whether one or more of the civil penalty assessment factors in G.S. 113A-64(a)(3) were wrongly applied to the detriment of the petitioner;

- 2) Whether the petitioner promptly abated continuing environmental damage resulting from the violation;
- 3) Whether the violation was inadvertent or a result of an accident;
- 4) Whether the petitioner had been assessed civil penalties for any previous violations;
- 5) Whether payment of the civil penalty will prevent payment for necessary remedial actions or would otherwise create a significant financial hardship; and
- 6) The assessed property tax valuation of the petitioner's property upon which the violation occurred, excluding the value of any structures located on the property.

SB 561 places the burden of showing the financial impact of the civil penalty and financial hardship on the petitioner. The Commission may only remit the entire penalty when (1) the petitioner has not been assessed civil penalties for previous violations and (2) payment will prevent payment for necessary remedial actions. The Commission cannot impose a penalty in excess of the penalty imposed by DENR.

SB 561 also sets a cap for the maximum cumulative total civil penalty assessed for all violations associated with the land-disturbing activity at \$25,000. This cap only applies when the person has not previously been assessed a civil penalty under the G.S. 113A-64(a)(1) and the person halted continuing environmental damage within 180 days of the date of notice. SB 561 directs the Secretary of DENR or the responsible local government to inform the person assessed the civil penalty of the option to request remission of the penalty, and applicable deadlines to request remission or halt continuing environmental damage.

Lastly, Section 4 of SB 561 amends G.S. 113A-61.1(c), which provides for notice of violation of erosion and sedimentation control programs, directing the approving authority to deliver the notice of violation in person and offer assistance in developing corrective measures. When the approving authority is unable to deliver the notice of violation within 15 days, the notice may be served in a manner described in G.S. 1A-1 Rule 4 and shall include information on how to obtain assistance in developing corrective measures.

ASSUMPTIONS AND METHODOLOGY:

Section 2

Continuing violations of the Sedimentation Pollution Control Act are currently capped at \$5,000 per day, with each day of a continuing violation constituting a separate violation. Senate Bill 561 would establish a *maximum cumulative* total civil penalty of \$25,000 for all violations associated with a land-disturbing activity for which an erosion and sedimentation control plan is required under the Act.

The proceeds of all civil penalty assessments, including those pertaining to violations of the Sedimentation Pollution Control Act, are remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. The Department is allowed to keep the actual costs of collection, which is not to exceed twenty percent (20%) of the amount collected. The collection cost percentage used by agencies is established annually by the Office of State Budget and Management, based upon the computation of the prior year's actual collection costs. The current

collection cost percentage for civil penalties assessed pertinent to violations of the Sedimentation Pollution Control Act is 20%.

In FY 2009-10, DENR issued 52 assessments for violations of the Sedimentation Pollution Control Act, for a total revenue collection of \$378,943 and an average assessment of \$7,278. The \$25,000 cap specified in Senate Bill 561 would likely apply to some of these assessments, and therefore would reduce the revenue realized by the Civil Penalty and Forfeiture Fund. However, at this time Fiscal Research is unable to determine the total number and amounts of violations assessed by DENR that exceed \$25,000.

Section 3

Senate Bill 561 allows requests for remission of a civil penalty to be filed with the Commission within 60 days of receipt of the notice of assessment. Remission requests heard by the Commission could potentially require additional meetings, although at this time Fiscal Research is unable to determine the projected number of additional meetings and their cost, if any.

Section

4

Senate Bill 561 requires DENR, the local government entity, or other approving authority to deliver notices of violation in person. This will create an increased workload for whichever entity is engaged in this work; however, at this time Fiscal Research is unable to determine which entity will undertake this work and the corresponding increase in personnel costs, if any.

SOURCES OF DATA:

Department of Environment and Natural Resources; Bill Summary adapted from Bill Digest S.B. 561 (04/11/0201)

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Claire Hester

APPROVED BY:

Lynn Muchmore, Director
Fiscal Research Division

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